

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD TIGGLE

Defendant-Appellant.

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UNPUBLISHED

October 5, 2010

No. 292567

Wayne Circuit Court

LC No. 08-017412-FH

Before: BORRELLO, P.J., and JANSEN and BANDSTRA, JJ.

PER CURIAM.

Defendant appeals by right following his jury-trial convictions of one count of assault with intent to do great bodily harm less than murder, MCL 750.84, and one count of assault and battery, MCL 750.81(1). Defendant was sentenced to 8 to 20 years in prison for the assault-with-intent conviction, and 93 days in jail for the assault-and-battery conviction. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Defendant argues that the trial court erred by assessing 25 points, as opposed to 10 points, for offense variable (OV) 3, MCL 777.33. We disagree. Because defendant objected to the trial court's scoring of OV 3 during sentencing, this issue is preserved. MCL 769.34(10). A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score. *People v Endres*, 269 Mich App 414, 417; 711 NW2d 398 (2006). When making sentencing decisions, a sentencing court may consider all record evidence before it when calculating the sentencing guidelines, including testimony from the preliminary examination. *People v Ratkov (After Remand)*, 201 Mich App 123, 125; 505 NW2d 886 (1993), remanded 447 Mich 984 (1994). Facts used in the scoring of a sentencing factor need only be proven by a preponderance of the evidence. *People v Drohan*, 475 Mich 140, 142-143; 715 NW2d 778 (2006); *People v Harris*, 190 Mich App 652, 663; 476 NW2d 767 (1991). The Court reviews de novo as a question of law the interpretation of the statutory sentencing guidelines. *Endres*, 269 Mich App at 417.

Defendants are to be sentenced according to accurately scored guidelines. *People v Francisco*, 474 Mich 82, 89; 711 NW2d 44 (2006). At issue is whether OV 3 was accurately scored in this case. MCL 777.33(1) provides in relevant part:

Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

\* \* \*

(c) Life threatening or permanent incapacitating injury occurred to a victim ..... 25 points

(d) Bodily injury requiring medical treatment occurred to a victim ..... 10 points

The trial court found that the victim suffered a permanent incapacitating injury to his eyes. Defendant objects and argues that no evidence was presented at trial or during sentencing to establish that the victim suffered any life threatening or permanently incapacitating injury. Therefore, defendant argues, the trial court was not permitted to score OV 3 at 25 points.

At trial, the victim's testimony regarding the long-term impact of his injury consisted of the following:

*Q.* Are you still receiving medical treatment?

*A.* Yes, for my head and eyes.

*Q.* Okay, have you had to see specialists?

*A.* Yes, I just got some new glasses for my eyes.

*Q.* Okay, you had to see an ophthalmologist?

*A.* Yes.

In addition to the trial testimony, the victim gave the following testimony during the preliminary examination:

*Q.* Do you suffer any injuries today as a result of this incident?

*A.* Yes, I do.

*Q.* What type of injuries do you still suffer?

*A.* I go back and forth to the eye doctor. And plus I go to have a head scan.

*Q.* Any other injuries?

*A.* Just my head and my eyes.

*Q.* Any other injuries you still suffer from just your head and your eyes?

*A.* My eyes, yes.

From this testimony, the extent of the damage to the victim's eyes is unclear. But, it is clear from the testimony that from the time of being beaten by defendant through at least the time of the trial, a period of ten months, the victim needed the treatment of an ophthalmologist, and he needed new glasses. The fact that no doctor testified or other medical evidence was introduced is immaterial. Our Supreme Court has stated that for purposes of OV 3, medical evidence is not necessary to prove a life threatening or permanently incapacitating injury. *People v McCuller*, 479 Mich 672, 697 n 19; 739 NW2d 563 (2007). Instead, as explained earlier, it is merely necessary that the trial court find the existence of a sentencing factor by a preponderance of the evidence. *Drohan*, 475 Mich at 142-143. Although the evidence in the record is not overwhelming, we conclude that there were minimally sufficient proofs to allow the court to find by a preponderance of the evidence that the victim had undergone prolonged medical treatment and suffered a permanent incapacitating injury to his eyes as a result of being beaten by defendant. See *People v Steele*, 283 Mich App 472, 492; 769 NW2d 256 (2009). Indeed, the fact that the victim needed new glasses and corrective lenses, rather than merely a one-time medical treatment, indicates that he did suffer a “*permanent* incapacitating injury” within the meaning of OV 3. MCL 777.33(1)(c) (emphasis added). Because there was adequate evidence in the record to support the score, the trial court did not abuse its discretion by assessing 25 points for OV 3. See *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

Affirmed.

/s/ Stephen L. Borrello  
/s/ Kathleen Jansen  
/s/ Richard A. Bandstra